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PATENT
GROUP 1800

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Tsukasa Matsumoto

Examiner: S. Saucier

For: METHOD FOR FRACTIONING RED
BLOOD CELLS AND ANTIBACTERIAL
MATERIALS OR BACTERIAL
PROLIFERATION INHIBITORS PRODUCED
THEREBY

Group Art Unit: 1808

Serial No.: 08/803,458

Atty. Dkt. No.: 6208.570

Filed: 02/20/97

Honorable Commissioner
of Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

RESPONSE TO RESTRICTION REQUIREMENT

In response to the restriction requirement set forth in the Office Action mailed June 10, 1997, applicant hereby provisionally elects Group I, namely claims 1, 2 and 6, with traverse.

The Examiner has required a four way restriction between claims 1, 2 and 6 (Group I), Claims 3 and 7 (Group II), Claims 4 and 8 (Group III), and Claims 5 and 9 (Group IV). Restriction was required because the Examiner believed the processes to be distinct from one another because they recite different and distinct steps which lead to different and distinct products. The Examiner further argued that Groups I through IV are independent and distinct from one another as they have acquired a separate status in the art, and require independent searches, particularly with regard to the literature searches.

Restriction may be required if two or more independent and distinct inventions are

claimed in one application (35 U.S.C. § 121). In the present case, although some of the claimed subject matter may be classified in different classes, the inventions are not independent. An "independent" invention means that there is no disclosed relationship between two or more subjects disclosed; that is, they are unconnected in design, operation or effect. MPEP § 802.01.

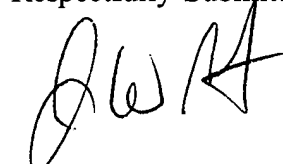
In contrast, the processes and products developed from the present invention have the *same operation* of fractioning red blood cells, having the *same effect* of producing products with antibacterial properties or inhibiting against bacterial proliferation. The Examiner has failed to show that such independence exists between the claimed subject matter.

In addition, restriction requirements are not to be made without showing there will be a burden on the PTO in prosecuting the application. In order to meet the requirements of MPEP § 802.02, the Examiner must show either 1) separate classification, 2) separate status in the art when they are classifiable together, or 3) a different field of search. With respect to Groups I and II, the Examiner has indicated that the classifications are identical, namely, class 435, subclass 2, and class 424, subclass 533. Likewise, the Examiner has failed to show any basis for the assertion that a different literature search must be conducted for the restricted groups. Logically, it would seem that the subject matter described in the present invention would not require separate literature searches, as the products and processes involved are so intimately related. Consequently, where the classification and field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among the related inventions. Thus, it is believed that Groups I and II should be examined together.

Likewise, Groups III and IV are also classified in class 435, subclass 2, and class 424 but in a different subclass of 534. While the claims in Group III and IV are not identically classified as the claims in Group I, it is believed that the classification within class 534 would not impose a burden on the Examiner to perform a search therein. The applicant notes that class 435, subclass 2, and class 424, subclass 534 have both been assigned to the Examiner's Art Unit. Thus, it is believed that the search of subclass 534 in a class already assigned to the Examiner's Art Unit, would not impose a burden on the Examiner as to justify a restriction requirement between Groups III and IV and Group I.

In view of the foregoing, the applicant respectfully requests that the requirement be withdrawn from consideration and that claims 1-9 presently pending in this application be examined. It is the applicant's belief that the claims are so intimately related, as to not impose a burden on the Examiner with regard to the search.

Respectfully Submitted,

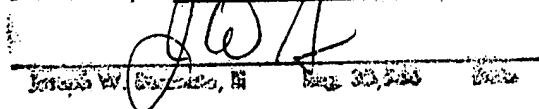


Joseph W. Berenato, III
Registration No. 30,546
Attorney for Applicant

Myers, Liniak & Berenato
6550 Rock Spring Dr., Suite 240
Bethesda, Maryland 20817
(301) 365-800

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Joseph W. Berenato, III Reg. 30,546 Date